

BDM:TRP
F. #2016R01872

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

17N716

----- X

In re the Seizure of:

ANY AND ALL FUNDS ON DEPOSIT, IN WRIGHT-PATT CREDIT UNION ACCOUNT NUMBER 1900005713808, TRUESAVER ACCOUNT 00, HELD IN THE NAMES OF ZACKARY K. SIZEMORE AND CHELSEA L. SIZEMORE, UP TO AND INCLUDING THE SUM OF FOURTEEN THOUSAND ONE HUNDRED DOLLARS AND NO CENTS (\$14,100.00), AND ALL PROCEEDS TRACEABLE THERETO.

AFFIDAVIT IN SUPPORT
OF APPLICATION FOR
SEIZURE WARRANT

----- X

EASTERN DISTRICT OF NEW YORK, SS:

ERIC MARYEA, being duly sworn, deposes and states that he is a Special Agent with the United States Department of Defense, Defense Criminal Investigative Service ("DCIS"), duly appointed according to law and acting as such.

1. I have been a Special Agent with the DCIS for approximately 7 years, and have been involved in the investigation of numerous cases involving the theft and conversion of stolen government property and violations of U.S. export control laws. I have gained expertise in the conduct of investigations into theft and conversion of stolen government property and violations of U.S. export control laws through training in seminars, classes, and daily work related to conducting these types of investigations. I have participated in numerous investigations, during the course of which I have interviewed suspects and witnesses, conducted physical surveillance, executed court-authorized search and arrest warrants, and used other investigative techniques to secure relevant information regarding

various crimes. I am familiar with the facts and circumstances set forth below from my participation in the investigation; my review of the investigative file, including the United States Air Force's documentation; and from reports of other law enforcement officers involved in the investigation.

2. As a result of my training and experience, I am familiar with the techniques and methods of operation used by individuals involved in criminal activity to conceal their activities and criminal proceeds from detection by law enforcement authorities. In addition, during the time I have been employed as a Special Agent, I have been assigned to investigations involving the tracing of currency and other proceeds flowing from illegal enterprises to assets and other monetary instruments. Through this involvement, I have been responsible domestically for the forfeiture of currency, bank accounts, and other assets.

3. This affidavit is submitted in support of the government's application for a seizure warrant for any and all funds on deposit in Wright-Patt Credit Union account number 1900005713808, Truesaver Account 00, held in the names of Zackary K. Sizemore and Chelsea L. Sizemore, up to and including the sum of fourteen thousand one hundred dollars and no cents (\$14,100.00) (the "Subject Account"), and all proceeds traceable thereto. As set forth below, certain funds in the amounts stated herein on deposit in the Subject Account constitute or are derived from proceeds traceable to an offense constituting a "specified unlawful activity," to wit, theft and sale of government property, in violation of Title 18, United States Code, Section 641, and are therefore subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

4. The facts and information in this affidavit are based upon my personal knowledge, the observations of other law enforcement personnel involved in this investigation, information obtained from confidential sources of information, and the review of bank and other financial records.

5. Because this affidavit is submitted for the limited purpose of establishing probable cause to seize certain funds held in the Subject Account, I have not described all of the relevant facts observed by me or known to the government. Where the contents of documents and the actions and statements of others are reported herein, they are, unless otherwise indicated, reported only in substance and in part.

STATUTORY AND REGULATORY FRAMEWORK

6. Title 21, United States Code, Section 641 provides, in relevant part, that whoever steals, purloins, or knowingly converts to his use or the use of another, or without authority sells, conveys or disposes of any ... thing of value of the United States or of any department or agency thereof ... shall be punished.

7. Title 18, United States Code, Section 981(a)(1)(C) provides for the forfeiture of any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of any offense, or a conspiracy to commit such an offense, which constitutes "specified unlawful activity," as defined in Title 18, United States Code, Section 1956(c)(7).

8. Pursuant to Title 18, United States Code, Section 1961(1)(D), as incorporated by Title 18, United States Code, Section 1956(c)(7)(D), the term "specified unlawful activity" includes the theft and sale of government property.

9. Pursuant to 18 U.S.C. § 984, in any forfeiture action in rem in which the subject property is cash or funds deposited in an account in a financial institution, any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture within one year of the date of the offense shall be subject to forfeiture.

10. Pursuant to Title 21, United States Code, Section 853(f) and Title 18, United States Code, Section 981(b), this Court is empowered to issue a seizure warrant for any property subject to forfeiture.

FACTUAL BACKGROUND

11. The government hereby attaches the criminal complaint filed in United States v. Zachary Sizemore, criminal docket no. 16-M-1051, and incorporates it by reference herein. (See Complaint, attached hereto as Exhibit A).

12. As noted in the Complaint, on or about and between July 2013 and November 2016 (the “Relevant Period”), Zachary Sizemore, an active duty service member of the United States Air Force, knowingly and willfully stole and then sold, without government authority, at least 45 pieces of military-owned night vision and/or thermal equipment (“Equipment”).

13. Sizemore sold the Equipment primarily using an account he held at eBay, Inc. (“eBay”), an online internet auction sale website (the “eBay Account”). Sizemore posted photographs of the stolen Equipment and offered the Equipment to customers for sale on the eBay Account. Sizemore received payment for the Equipment from his customers to an account held in his name at PayPal, a company that operates a worldwide online payment

system that supports online money transfers and serves as an electronic alternative to traditional paper methods like checks and money orders (the “PayPal Account”).

14. As part of the investigation, a law enforcement officer acting in an undercover capacity purchased Equipment from Sizemore on eBay. Specifically, in or around October 2016, law enforcement learned that Sizemore had posted a Mini-Thermal Monocular (the “MTM”) for sale using his eBay Account. The UC won the auction for the MTM for \$4,055, and made payment to Sizemore’s PayPal Account. Sizemore shipped the MTM to a Queens address provided by the UC. Agents opened the parcel and confirmed that the MTM sent by Sizemore constituted stolen United States government property.

THE SUBJECT ACCOUNT

15. The Subject Account is within a bank account that is comprised of two sub-accounts: a checking account (the “Checking Account”), and the Truesaver 00 Account, a savings account (the “Truesaver Account”). Sizemore is listed as the “primary member owner” and Chelsea L. Sizemore is listed as “joint member owner” on the Subject Account.

16. A review of records, including records relating to the PayPal Account and the eBay Account, revealed that during the Relevant Period, Sizemore obtained at least \$95,000 from the sale of the stolen Equipment. A review of the records for the PayPal Account revealed that the Subject Account was linked to the PayPal Account, which allowed for direct transfers from the PayPal Account to the Subject Account. The financial investigation further revealed that Sizemore periodically transferred proceeds from the sale of the Equipment from the PayPal Account to the Subject Account. In addition, the funds in the Checking Account were routinely transferred into the Truesaver Account. The table below sets forth a sampling

of: (A) dates of transfers of illegal proceeds to the Checking Account from the PayPal Account; (B) amounts of deposits of illegal proceeds transferred into the Checking Account; (C) dates of transfers from the Checking Account to the Truesaver Account; and (D) amounts of transfers from the Checking Account to the Truesaver Account.

(A) Date of Transfer To Checking Account	(B) Amount of Proceeds Transferred Into Checking Account	(C) Date of Transfer To Truesaver Account	(D) Amount of Proceeds Transferred To Truesaver Account
11/12/2013	\$ 5,400.00	11/12/2013	\$ 5,400.00
01/27/2014	4,000.00	01/27/2014	4,000.00
08/15/2014	600.00	08/15/2014	600.00
08/29/2014	600.00	08/29/2014	600.00
09/03/2014	100.00		
09/23/2014	800.00	09/23/2014	800.00
11/10/2014	100.00		
09/04/2015	1,019.25	09/05/2015	700.00
09/30/2015	490.94		
01/12/2016	800.00		
03/28/2016	1,500.00		
06/10/2016	4,000.00		
06/15/2016	4,000.00		
08/10/2016	<u>2,000.00</u>	08/10/2016	<u>2,000.00</u>
Totals	\$ 25,410.19		\$ 14,100.00

17. As noted in the table above, during the Relevant Period, at least approximately \$14,100.00 in illegal proceeds from the sale of the Equipment was transferred from the Checking Account to the Truesaver Account.

CONCLUSION

18. Based on the facts set forth above, there is probable cause to believe that up to and including the sum of fourteen thousand one hundred dollars and no cents (\$14,100.00) on deposit in Wright-Patt Credit Union account number 1900005713808, Truesaver Account 00, held in the names of Zackary K. Sizemore and Chelsea L. Sizemore, constitute or are derived from proceeds traceable to an offense constituting a “specified unlawful activity,” to wit, theft and sale of government property, in violation of Title 18, United States Code, Section 641, and are therefore subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) and Title 28, United States Code, Section 2461(c). Accordingly, I respectfully request the issuance of a seizure warrant for the Subject Account in the aforementioned amount.

19. A restraining order, pursuant to 21 U.S.C. § 853(e), will not suffice to preserve the assets in question given the ease with which funds may move out of the Subject Account via wire transfer, electronic funds transfer, or otherwise, including, but not limited to, bank error.

20. Accordingly, your deponent respectfully request that the Court issue a seizure warrant pursuant to 18 U.S.C. § 981(b) and 21 U.S.C. § 853(f).

21. Because this Affidavit is submitted in connection with an ongoing investigation that would be jeopardized by premature disclosure of information, I request that this Affidavit and all related documents be filed under seal until further order of the Court, except that copies of the seizure warrants may be served at the time they are executed, and

that the government may provide copies of the warrants and this affidavit as required by its discovery obligations, including Rule 16 of the Federal Rules of Criminal Procedure.



ERIC MARYEA
Special Agent
Department of Defense
Defense Criminal Investigative Service

Sworn to before me this
11th day of August, 2017



MAGISTRATE J
UNITED STATES
EASTERN DISTRICT OF MICHIGAN

S/60

MMS:PWB/NDB
F. #2016R01872

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

- against -

ZACHARY SIZEMORE,

Defendant.

- - - - -X

EASTERN DISTRICT OF NEW YORK, SS:

TO BE FILED UNDER SEAL

COMPLAINT AND AFFIDAVIT
IN SUPPORT OF A
ARREST WARRANT

(18 U.S.C. § 641)

16M1051

ERIC MARYEA, being duly sworn, deposes and states that he is a Special Agent with the Department of Defense, Defense Criminal Investigative Service, duly appointed according to law and acting as such.

In or about and between July 2013 and November 2016, within the Eastern District of New York and elsewhere, the defendant ZACHARY SIZEMORE, did willfully and knowingly steal, purloin, and convert to his own use, and without authority to sell, convey, and dispose of property of the United States, to wit: the theft and the subsequent sale of military-owned night vision equipment, the aggregate value of which exceeded \$1,000.

(Title 18, United States Code, Section 641)

The source of your deponent's information and the grounds for his belief are as follows:¹

¹ Because the purpose of this Complaint is to set forth only those facts necessary to establish probable cause to arrest, I have not described all the relevant facts and circumstances of which I am aware.

1. I am a Special Agent with the Department of Defense, Defense Criminal Investigative Service ("DCIS") and have been involved in the investigation of numerous cases involving the theft and conversion of stolen government property and violations of U.S. export control laws. I have gained expertise in the conduct of investigations into theft and conversion of stolen government property and violations of U.S. export control laws through training in seminars, classes, and daily work related to conducting these types of investigations. I have participated in numerous investigations, during the course of which I have interviewed suspects and witnesses, conducted physical surveillance, executed court-authorized search and arrest warrants, and used other investigative techniques to secure relevant information regarding various crimes. I am familiar with the facts and circumstances set forth below from my participation in the investigation; my review of the investigative file, including the United States Air Force's documentation; and from reports of other law enforcement officers involved in the investigation.

2. DCIS, in conjunction with the Department of Homeland Security, Homeland Security Investigations ("HSI") and the Air Force Office of Special Investigations ("AFOSI"), is investigating the theft and sale without authorization of military equipment, including night vision devices, such as Night Vision Goggles ("NVGs") and Mini-Thermal Monoculars ("MTMs") (a night vision-type device that forms an image using thermal or infrared radiation).

3. Night vision devices acquired by the United States military, such as the stolen NVGs and MTMs described below, contain components that are made to military specifications and are required by the United States military to be rendered useless for their

intended purpose prior to leaving government control. Accordingly, United States military policies prohibit the sale of fully-functional military-issued night vision equipment, like the NVGs and the MTMs described below, on websites like eBay or otherwise, and any such sale would therefore be without government authority.

4. A review of Air Force records revealed that the defendant ZACHARY SIZEMORE is an active-duty service member currently stationed at Wright Patterson Air Force Base in Ohio assigned to the 88th Security Forces ("SF") Squadron. SIZEMORE's home address is listed as 5816 Woodpine Court, Dayton, Ohio 45424 (the "Home Address"). His duties include serving as a liaison with civilian and military law enforcement, escorting munitions shipments, performing inspections, and controlling entry into restricted areas.

5. The defendant ZACHARY SIZEMORE has also served as the "SF Armorer." Based on my training and experience, and discussion with other law enforcement and military personnel, I understand that an SF Armorer is responsible for, among other things, inventory control of United States military equipment, including firearms and night vision devices. Additionally, SIZEMORE's enlisted performance reviews provide that he was responsible for ensuring accountability of over \$2,900,000 in weapons, ammunition, and non-tactical communication equipment, and credit him with reconfiguring the arms room. He has also been trained as a Tactical Automated Security System ("TASS") operator, which refers to an Air Force intrusion detection and surveillance system used for security monitoring around fixed-site airbases, semi-permanent Forward Operating bases, and other mobile tactical deployments.

6. On June 9, 2016, pursuant to a search warrant issued by the Honorable Mark Falk, United States Magistrate Judge, District of New Jersey, DCIS and HSI agents seized a parcel bearing the sender name of the defendant ZACHARY SIZEMORE and setting forth the shipper's address as the Home Address. After seizing the parcel, agents discovered that the parcel shipped by SIZEMORE contained, among other items, a Harris Corp. Army/Navy PVS-7D night-vision goggle (the "STOLEN AN/PVS-7D") containing a Generation 3 image intensifier tube, which contains among the most recent generation of night-vision technology. Records obtained from eBay, Inc. ("eBay"), an internet auction-sales website, and PayPal revealed that, on or about May 27, 2016, SIZEMORE sold the STOLEN AN/PVS-7D in an eBay transaction for \$1,713.45. Law enforcement confirmed that the STOLEN AN/PVS-7D was originally sold to the United States military, and therefore constituted stolen United States government property.

7. On June 14, 2016, pursuant to a search warrant issued by the Honorable Joseph A. Dickson, United States Magistrate Judge, District of New Jersey, DCIS and HSI agents searched a parcel bearing the sender name of the defendant ZACHARY SIZEMORE and setting forth the shipper's address as the Home Address. Agents discovered that the parcel shipped by SIZEMORE contained, among other items, a L-3 Communications Corp. Mini-Thermal Monocular (the "FIRST STOLEN MTM"). Records obtained from eBay and PayPal revealed that, on or about May 27, 2016, SIZEMORE sold the FIRST STOLEN MTM in an eBay transaction for \$3,450. Law enforcement confirmed that the FIRST STOLEN MTM was originally sold to the United States military, and therefore constituted stolen United States government property.

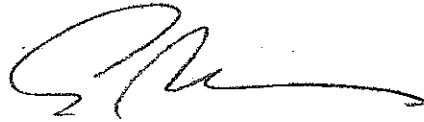
8. On or about October 12, 2016, DCIS and HSI learned that the defendant ZACHARY SIZEMORE was attempting to sell another MTM (the "SECOND STOLEN MTM") on eBay. On October 15, 2016, an undercover agent (the "UC") engaged SIZEMORE in an email dialogue via eBay from Queens, New York regarding the purchase of the device. On or about October 17, 2016, the UC won the auction for the SECOND STOLEN MTM for \$4,055. SIZEMORE shipped the SECOND STOLEN MTM to a Queens address provided by the UC. On or about November 17, 2016, the device was delivered to the Queens address. Agents opened the parcel and confirmed that the SECOND STOLEN MTM constituted stolen United States government property.

9. In addition to the STOLEN AN/PVS-7D NVG and the FIRST AND SECOND STOLEN MTMs, eBay and PayPal records show that, between approximately July 14, 2013 and June 11, 2016, SIZEMORE created postings for, and sold or attempted to sell at least 45 pieces of night vision equipment or thermal equipment, including the following: eleven PAQ-4C infrared aiming lights; eight PVS-7 night vision goggles; eight Aimpoint CompM4 Red Dot Sights (used for aiming); six PVS-14 night vision monoculars; four Insight Technology AN/PAS-23 MTMs with infrared-laser; two AN/PEQ-2A target pointer/illuminating/aiming lights (TPIAL); and one Aimpoint CompM2 Red Dot Sight. Of the items listed above, at least 38 of them were sold through eBay for a total value of approximately \$50,000.

10. The defendant ZACHARY SIZEMORE sold, or attempted to sell, stolen military-owned night vision equipment. Accordingly, there is probable cause to believe that SIZEMORE knowingly and willfully sold or attempted to sell, without government authority,

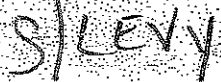
stolen night vision equipment belonging to the United States, the aggregate value of which exceeded \$1,000.

WHEREFORE, your deponent respectfully requests that the defendant ZACHARY SIZEMORE, be dealt with according to law. I further request that the Court order that this application, including the affidavit and arrest warrant, be sealed until further order of the Court. These documents discuss an ongoing criminal investigation. Disclosure of this application and these orders would seriously jeopardize the ongoing investigation, as such a disclosure would give the target of the investigation an opportunity to destroy evidence, change patterns of behavior, notify confederates and flee from or evade prosecution.

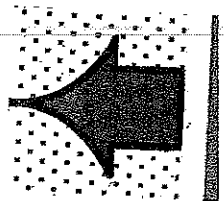


ERIC MARYEA
Special Agent
Department of Defense
Defense Criminal Investigative Service

Sworn to before me this
28th day of November, 2016



ROBERT M. LEVY
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK





TO: Clerk's Office
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

APPLICATION FOR LEAVE
TO FILE DOCUMENT UNDER SEAL

UNITED STATES

-v.-

ZACHARY SIZEMORE

Docket Number

16M1051

SUBMITTED BY: Plaintiff Defendant DOJ ☒

Name: Nomi Berenson

Firm Name: U.S. Attorney's Office, EDNY

Address: 271 Cadman Plaza East

Brooklyn, NY 11201

Phone Number: 718-254-6308

E-Mail Address: nomi.berenson@usdoj.gov

INDICATE UPON THE PUBLIC DOCKET SHEET: YES NO
If yes, state description of document to be entered on docket sheet:

A) If pursuant to a prior Court Order:

Docket Number of Case in Which Entered: _____

Judge/Magistrate Judge: _____

Date Entered: _____

B) If a new application, the statute, regulation, or other legal basis that authorizes filing under seal

defendant not yet arrested

ORDERED SEALED AND PLACED IN THE CLERK'S OFFICE,
AND MAY NOT BE UNSEALED UNLESS ORDERED BY
THE COURT.

DATED: Brooklyn, NEW YORK

11/21/2016

U.S. DISTRICT JUDGE/U.S. MAGISTRATE JUDGE

RECEIVED IN CLERK'S OFFICE 11/21/2016

DATE

MANDATORY CERTIFICATION OF SERVICE:

A.) A copy of this application either has been or will be promptly served upon all parties to this action, B.) Service is excused by 31 U.S.C. 3730(b), or by the following other statute or regulation: _____; or C.) ☒ This is a criminal document submitted, and flight public safety, or security are significant concerns. (Check one)

11/21/2016

DATE

SIGNATURE

Nomi Berenson